

Amendment No. 2 to HB1367

Sargent
Signature of Sponsor

AMEND Senate Bill No. 1363

House Bill No. 1367*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 67-5-501, is amended by adding the following language as a new, appropriately designated subdivision:

() "Modern market telecommunications provider" means:

(A) An incumbent local exchange telephone company that elects market regulation pursuant to § 65-5-109;

(B) A telephone cooperative organized pursuant to § 65-29-102; or

(C) A nongovernmental entity or separate operating division within the entity if the business activity of the entity or division is limited to providing:

(i) Competitive local exchange telephone services; or

(ii) Interconnected voice over internet protocol services;

SECTION 2. Tennessee Code Annotated, Section 67-5-501(8)(B), is amended by adding the following language as a new subdivision:

(iv) Modern market telecommunications providers;

SECTION 3. Tennessee Code Annotated, Section 67-5-502, is amended by deleting subsections (b) and (c) and substituting instead the following:

(b) The property of all street railroad, gas, electric light companies, modern market telecommunications providers, and all public utility companies, including their franchises, used within any town, city, or taxing district where the office of the company is located outside of such incorporated city or town or taxing district, but with the main property within the city, shall be taxed in the city, town, or taxing district as if the office was situated within the city limits, and the property, including franchises of the

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corporations and joint stock companies that lie wholly or mainly within any incorporated city, taxing district, or town, or whose chief business is within any incorporated city, taxing district, or town, shall be assessed for taxation in such city, taxing district, or town; provided, that all real property and tangible personal property shall be taxed in the district where situated; and provided further, that public utility property of every kind, whether real property, tangible personal property, or intangible personal property, shall all be assessed for taxes at fifty-five percent (55%) of its value and that all property of modern market telecommunications providers shall be assessed at the rate applicable to commercial and industrial property of the same type.

(c) Leased personal property used by a public utility company or modern market telecommunications provider shall be assessed to such company or provider, unless such property is the subject of a lawful agreement between the lessee and a local government for payments in lieu of taxes. Other leased personal property shall be classified according to the lessee's use and assessed to the lessee, unless such property is the subject of a lawful agreement between the lessee and a local government for payments in lieu of taxes. Personal property that is leased to and used by any religious, charitable, scientific, or nonprofit educational institution purely and exclusively for one (1) or more of the purposes for which the institution was previously determined to be exempt under § 67-5-212 shall not be deemed to be used in a business or profession, and shall not be classified as industrial or commercial property for property tax purposes.

SECTION 4. Tennessee Code Annotated, Section 67-5-1301(a), is amended by adding the following language as a new subdivision:

() Modern market telecommunications providers;

SECTION 5. Tennessee Code Annotated, Section 67-5-1302, is amended by deleting the second sentence of subdivision (a)(1) and substituting instead the following:

Such operating property which is used predominantly to provide cellular telephone service, radio common carrier service, or long distance telephone service, or which is used by a modern market telecommunications provider, shall be assessed at the rate applicable to commercial and industrial property of the same type.

SECTION 6. Tennessee Code Annotated, Section 67-5-1302, is amended by deleting subdivision (b)(1) and substituting instead the following:

(1) The assessments of public utility property or property of modern market telecommunications providers, as set by the comptroller of the treasury in accordance with subsection (a), shall be adjusted, where necessary, on the basis of appropriate ratios, as are determined by the board of equalization for purposes of equalizing the values of such property to the prevailing level of value of property in each jurisdiction; provided, that no equalization factor for purposes of this section may exceed a factor of one (1.000).

SECTION 7. Tennessee Code Annotated, Section 67-5-1329, is amended by deleting subsection (b) and substituting instead the following:

(b) If any railroad, public utility, or modern market telecommunications provider has been or is hereafter aggrieved at the assessment so fixed and certified by the board, such taxpayer shall be required to pay the taxes due and owing the state, counties, and municipalities, upon the full value of the assessment, under protest. Upon termination of any proceedings that may be instituted in any of the courts of this state or in any of the courts of the United States by such taxpayer to review such assessment, the state, counties and municipalities, and any school district, road district, or other taxing district to which such taxes have been paid, shall refund in cash and with interest, such part of the taxes so paid to it as may be adjudged to be excessive or illegal by any final decree

or order entered in any such proceeding, or in default of such refund, such taxpayer is authorized to take credit for the amount of such illegal or excessive tax, with interest, against any tax thereafter becoming due from and payable by such taxpayer, to the state, or any county, municipality, road district, school district, or any other taxing district authorized by law to levy taxes.

SECTION 8. Tennessee Code Annotated, Section 67-5-1601, is amended by deleting subsection (h) and substituting instead the following:

(h)

(1) There shall also be an updating of the localized and nonoperating real property of public utilities and modern market telecommunications providers in each county, and such must be accomplished in the same year as other locally assessed properties.

(2) All assessing and updating of operating properties of public utility companies and modern market telecommunications providers must be done by the comptroller of the treasury in accordance with part 13 of this chapter.

(3) All expenses for assessing and updating of operating properties of public utilities and modern market telecommunications providers must be paid by the comptroller of the treasury.

SECTION 9. Tennessee Code Annotated, Section 67-5-1606, is amended by deleting subsection (c) and substituting instead the following:

(c) The state board of equalization shall each year certify to the comptroller of the treasury appraisal levels, as are determined by the board for each county, to be used by the commission for purposes of computing the assessments of public utility properties and operating properties of modern market telecommunications providers.

SECTION 10. Tennessee Code Annotated, Section 67-5-2003, is amended by deleting subsection (i) and substituting instead the following:

(i) Delinquent public utility taxes and taxes owed by modern market telecommunications providers shall not be immediately collected under this section if the local assessment includes any real property. The trustee or collector shall confirm with the comptroller of the treasury whether such taxpayer's local assessment includes any real property.

SECTION 11. Tennessee Code Annotated, Section 67-5-2801, is amended by deleting subsection (b) and substituting instead the following:

(b) In order to waive the enforcement and collection of taxes, including penalties, interest, or attorney fees and costs, imposed on public utility personal property or personal property of modern market telecommunications providers, the trustee or collector must first confirm with the comptroller of the treasury that such taxpayer's local assessment only includes personal property and does not include any real property. If such taxpayer is still operating, then no waiver may be requested or approved even if the local assessment only includes personal property and no personal property can be found in the trustee's or the collector's jurisdiction. If such taxpayer has ceased all operations and the local assessment does not include any real property, then the trustee or the collector may request a waiver in accordance with subdivisions (a)(1)-(3).

SECTION 12. Tennessee Code Annotated, Section 67-6-221, is amended by deleting subsection (b) and substituting instead the following:

(b) The revenue from a rate equal to one-half percent (0.5%) of the tax shall be deposited in the general fund. The remainder of the revenue generated from the tax imposed by subsection (a) shall be distributed to municipalities and counties in accordance with subsection (c) to mitigate the impact on local governments as the result of assessing the operating property of modern market telecommunications providers as commercial and industrial property rather than as public utility property. The department of revenue shall hold all such revenue until it is first distributed to the local governments

on March 20, 2018, or as soon thereafter as possible, to allow sufficient time to determine the correct distribution of revenue under subsection (c).

(c) On or before January 1, 2018, the office of state assessed properties in the office of the comptroller of the treasury shall calculate, for each local government levying an ad valorem property tax, the difference in property tax revenue or comparable in lieu of tax payments received for tax year 2017 that results from assessing the operating property of modern market telecommunications providers as commercial and industrial property rather than as public utility property. These calculations shall be used to calculate each local government's percentage share of the total reduction in such revenue for tax year 2017 and these percentages shall be forwarded to the department of revenue by January 1, 2018. For all periods beginning on or after June 1, 2017, the department shall distribute the revenue generated from the tax imposed under subsection (a), other than the revenue earmarked for the general fund under subsection (b), to the local governments in proportion to each local government's percentage share of the total difference in property tax and in lieu of tax revenue for tax year 2017, as reported to the department by the office of state assessed properties pursuant to this subsection (c).

(d)

(1) Beginning January 1, 2018, notwithstanding any law to the contrary, every modern market telecommunications provider shall pay an annual privilege tax for the privilege of competing with public utilities to provide telecommunications services in this state.

(2) Except as otherwise provided in subdivision (d)(3), the amount of tax imposed under this subsection (d) shall be equal to the sum of:

(A) The taxpayer's pro rata share percentage multiplied, as applicable, by:

(i) Four million dollars (\$4,000,000), for the tax imposed in 2018;

(ii) Three million dollars (\$3,000,000), for the tax imposed in 2019;

(iii) Two million dollars (\$2,000,000), for the tax imposed in 2020;

(iv) One million dollars (\$1,000,000), for the tax imposed in 2021; and

(v) Zero dollars (\$0.00), for the tax imposed in 2022; and

(B) The taxpayer's pro rata share percentage multiplied, as applicable, by:

(i) Seven hundred fifty thousand dollars (\$750,000), for the tax imposed in 2018, 2019, and 2020; and

(ii) Five hundred thousand dollars (\$500,000), for the tax imposed in 2021 and 2022.

(3) The total privilege tax imposed on a taxpayer under this subsection

(d) shall not exceed the difference between:

(A) The aggregate ad valorem taxes and in lieu of tax payments paid by such taxpayer to political subdivisions of this state during the prior tax year; and

(B) The net amount of ad valorem tax and in lieu of tax payments such taxpayer would have paid in the prior tax year had its operating property been classified as public utility property, less the amount of the most recent payment such taxpayer received under § 67-6-222(b).

(4) Any taxpayer claiming that subdivision (d)(3) applies to limit its privilege tax liability for a particular tax year shall notify the department of

revenue of such claim in the manner prescribed by the department and must prove by clear and convincing evidence that such limitation applies.

(5) The privilege tax shall be reported and paid annually to the department of revenue on or before April 20 of each year in the manner prescribed by the department. On or before March 1, 2018, the department shall coordinate with the office of state assessed properties in the office of the comptroller of the treasury to calculate the pro rata share percentage of each taxpayer subject to the privilege tax imposed by this subsection (d) and shall send notice to each such taxpayer providing the taxpayer with its pro rata share percentage and prescribing the manner in which the taxpayer must report and pay the privilege tax imposed by this subsection (d).

(6) Notwithstanding any law to the contrary, all moneys received by the department of revenue under this subsection (d) shall be distributed in the following manner:

(A) The revenue from the portion of the tax calculated under subdivision (d)(2)(A) shall be deposited in the general fund; and

(B) The revenue from the portion of the tax calculated under subdivision (d)(2)(B) shall be distributed to the local governments in the same proportion that revenue is distributed to local governments under subsection (c).

(7) Any moneys received from a taxpayer that prove by clear and convincing evidence that the limit set forth in subdivision (d)(3) applies for a particular tax year shall be deposited in the general fund and distributed to the local governments in the same relative proportion as those moneys would have been deposited in the general fund under subdivision (d)(6)(A) and distributed to the local governments under subdivision (d)(6)(B) in the same tax year if the limitation on privilege tax liability had not applied.

(8) This subsection (d) shall be repealed on December 31, 2022. No privilege tax shall be levied under this subsection (d) after December 31, 2022. This subdivision (d)(8) shall not absolve any taxpayer of liability for any tax levied under this subsection (d) prior to December 31, 2022.

(9) This subsection (d) shall not apply to a municipal or similar provider of broadband services that makes in lieu of tax payments pursuant to title 7, chapter 52, part 4 or 6, or that makes similar in lieu of tax payments pursuant to a private act.

(e) When any person fails to correctly report on a return the person's sales of interstate or international telecommunications services subject to tax under subsection (a), there shall be imposed a penalty in the amount of ten percent (10%) of the taxes due on such sales or twenty-five percent (25%) of the taxes due on such sales if the commissioner determines that the failure to correctly report such sales is the result of gross negligence. The commissioner may waive such penalty, in whole or in part, if the commissioner determines that the failure is not due to gross negligence, intentional disregard for any tax law or rule promulgated under this title, or fraud.

(f) As used in this section:

(1) "Modern market telecommunications provider" means a modern market telecommunications provider, as defined in § 67-5-501, that was operating within the state as of January 1, 2017, and that received an ad valorem tax equity payment under § 67-6-222(b) in at least one (1) of the three (3) years prior to January 1, 2017; and

(2) "Pro rata share percentage" means a taxpayer's pro rata share of the total assessed value of all operating property used by modern market telecommunications providers in the state during tax year 2017.

SECTION 13. Tennessee Code Annotated, Section 67-6-222, is amended by adding the following language as a new subsection:

(c) The telecommunications ad valorem tax reduction fund created by this section is discontinued effective June 2, 2017, subject to the following:

(1) On or before June 1, 2017, the comptroller of the treasury shall make all payments that are required by subsection (b). Any moneys remaining in the telecommunications ad valorem tax reduction fund as of June 1, 2017, that are in excess of the amount necessary to make the payments must be allocated pursuant to § 67-6-103(a); and

(2) No person is entitled to any payment under subdivision (c)(1), unless the payment is claimed on or before May 1, 2017.

SECTION 14. Tennessee Code Annotated, Title 67, Chapter 5, Part 5, is amended by adding the following new section:

Beginning on January 1, 2023, the operating property of a municipal or similar provider of broadband services that provides competitive local exchange telephone services or interconnected voice over internet protocol services through a dedicated telecommunications division and that makes in lieu of tax payments pursuant to title 7, chapter 52, part 4 or 6, or that makes similar in lieu of tax payments pursuant to a private act, and that is currently paying such in lieu of taxes based upon a rate of assessment of fifty-five percent (55%), shall be classified and assessed in the same manner as the operating property of a modern market telecommunications provider for purposes of calculating the in lieu of tax payments to be paid with respect to its operating property used to provide such competitive local exchange telephone services or interconnected voice over internet protocol services.

SECTION 15. Sections 1 through 11 of this act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to all tax periods beginning on or after January 1, 2017. Section 12 of this act shall take effect on June 1, 2017, the public welfare requiring it. All remaining sections of this act shall take effect upon becoming a law, the public welfare requiring it.